

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2012090643
v.	
TORRANCE UNIFIED SCHOOL DISTRICT,	
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TORRANCE UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2012100259
v.	
PARENT ON BEHALF OF STUDENT.	ORDER GRANTING MOTION TO CONSOLIDATE AND CONTINUANCE OF DISTRICT CASE
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On September 20, 2012, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) in OAH case number 2012090643 (Student's case), naming Torrance Unified School District (District).

Student's case contains two issues. Student alleges that District denied him a free and appropriate public education (FAPE) by failing to provide an appropriate behavioral intervention plan, beginning with the March 2011 individual education program (IEP) offer, and continuing through the June 6, 2012 IEP offer. Student also alleges that District denied him a FAPE by failing to conduct an appropriate functional analysis assessment (FAA) dated June 6, 2012.

On October 4, 2012, District filed a complaint in OAH case number 2012100259 (District's case), naming Student. In its case, District seeks a determination that its FAA was appropriate.

On October 11, 2012, the parties stipulated to a continuance of Student's case, and based upon the parties' stipulation, and for good cause shown, on October 12, 2012, OAH continued the mediation to December 18, 2012, the prehearing conference (PHC) to January 16, 2013, and the due process hearing to January 22 – 24, and 29-30, 2013.

On October 24, 2012, District filed a Motion to Consolidate District's case with Student's case.

On October 24, 2012, Student notified OAH that it would be represented in District's case by its counsel of record in Student's case.

On October 25, 2012, OAH contacted Student's counsel to confirm that it received District's Motion to Consolidate, and to ascertain whether Student intended to file an opposition. Student's counsel informed OAH that it would not be filing an opposition, and that they would prefer consolidation and continuance of the consolidated matter to the dates set in Student's case.

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Here, the First Case and Second Case involve a common question of law or fact, specifically, the same issue of whether the FAA conducted was appropriate. District's case mirrors Student's second issue. District was obligated to file the action when it was notified of Student's request for an IEE, which occurred, according to District, when it received Student's case. When a parent requests an IEE at public expense, the school district must, "without unnecessary delay," either initiate a due process hearing to show that its evaluation is appropriate, or provide the IEE at public expense, unless the school demonstrates at a due process hearing that the evaluation obtained by the parent does not meet its criteria. (34 C.F.R. §300.502(b)(4); Ed. Code, § 56329, subd. (c).) If the public agency files a due process complaint notice to request a hearing, and the final decision is that the agency's evaluation was appropriate, the parent still has the right to an IEE, but not at public expense. (34 C.F.R. § 300.502(b)(3).)

In addition, consolidation furthers the interests of judicial economy because Student's other issue involves the appropriateness of District's BIP, which in large part, depends on the same data collected or reviewed in the FAA.

For these reasons, consolidation is granted.

In addition, although District's Motion to Consolidate did not expressly request a continuance, its request was implied by its previous stipulation to continue Student's case -- which contained the identical issue -- to agreed-upon dates. A due process hearing must be

held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).) As such, having already continued Student's case for good cause, District's case and the consolidated matter is continued to the agreed-upon dates in Student's case.

ORDER

1. District's Motion to Consolidate is granted.
2. All dates previously set in District's case (OAH case number 2012100259) are vacated.
3. District's case is continued and the consolidated cases shall proceed according to the scheduling order for Student's case: mediation, December 18, 2012; PHC, January 16, 2013; and the due process hearing, January 22-24, and 29-30, 2013.
4. Student's case shall be the primary case. The parties shall utilize the consolidated caption in all filings with OAH, and the primary case shall be the repository for all documents related to the consolidated matter.
5. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in Student's case (OAH case number 2012090643).

Dated: October 25, 2012

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings